IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 292 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEMENDRAKUMAR NARAYANDAS PATEL AND ANOTHER
Versus
MRUDULABEN ARVINDBHAI DAVE

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Appearance :
MR SURESH M SHAH for the Petitioners
MR KV SHELAT for the Respondent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 11/05/2007

ORAL JUDGMENT

1. Petitioners – original defendants – appellants are before this Court praying that:

"7. (a) Records and proceedings of the case may kindly be

called for from the lower Courts and judgment and decree passed by the Courts below may be reversed and set aside with costs throughout by dismissing the suit."

2. The facts leading to present Civil Revision Application are as under:

2.1 The respondent herein – original plaintiff filed a suit being H.R.P. Suit No.435 of 1997 alleging that she is the owner and landlady of the suit premises – bungalow No.7, Shivam, sub-plot No.7 and Final Plot No.186; that out of the said property, defendant No.1 was let out one drawing room, one bad room, veranda, kitchen, bathroom and W.C. On the south east portion of the property at a monthly rent of Rs.200/- plus taxes and electricity charges by executing a rent note dated 10.07.1971 – Exh.26; that the premises were let for the residential purpose only, as is mentioned in Clause 4 of the said rent note; that defendant No.1 is not using the suit premises; that he has acquired suitable accommodation; that the rent is paid up to 30.09.1996 and is due from 01.07.1996 to 28.02.1997, totaling to Rs.1,000/-; that defendant No.1 has sublet the suit premises to defendant No.2 and defendant No.2 is using the suit premises for commercial purposes; that he is carrying on business of garment in the name of, 'Shrinath Traders'; that defendant No.1 has changed use of the suit premises from residential to commercial, thus by subletting and change of user, defendant No.1 has committed breach of terms of tenancy; that the

defendant by misrepresentation to repair terrace for leakage, took key and thereafter, he did not return the key of the terrace and thereby, he made encroachment on terrace, which is not let out to him; that defendant No.2 has acquired his own bungalow at Thaltej and his intention is to transfer, assign or sublet the suit premises.

2.2 The plaintiff issued notice and terminated tenancy of defendant No.1 and thereafter, filed present suit for possession of the suit premises from the defendant.

2.3 The suit was contested by the defendant by filing written statement at Exh.37 inter alia contending that the allegations of the plaintiff are not true; that there is no dispute regarding description of the suit premises; that there is dispute of standard rent; that it is not true that the rent note is executed and the suit premises were rented for residential purposes only; that it is not true that defendant No.1 is not occupying the suit premises and he has acquired suitable premises; that the plaintiff should prove that the rent is due from 01.07.1996; that it is not true that defendant No.1 has sublet the suit premises to defendant No.2 and that defendant No.2 is using the suit premises for commercial purpose; that it is not true that defendant No.1 has changed user of the suit premises; that it is not true that he has encroached terrace portion. It is contended that the plaintiff has permitted the defendant to use suit premises for business from very beginning and that he has not committed breach of the terms of rent note.

2.4 The defendant has put up his case as under:

2.5 That during the riots of 1969, the defendant's elder brother – Sharadbhai came to reside in bungalow No.12 of Dhaval Society; that the rent note was executed in the name of Sharadbhai; that after the members of the family were increased, Sharadbhai was residing in bungalow No.13; that the defendant and his parents were residing together, that that time, defendant No.2 was unmarried; that the rent receipt was issued in the name of defendant No.1.

2.6 It is also the case of the defendant that partnership firm of his two brothers S.Narayan and D.Narayan is situated in Sakar Bazar; that the rent of the suit premises is paid from the firm of defendant; that the defendant never sublet the suit premises to defendant No.2; that the firm of defendant No.1 is, 'Prabhu Traders' and another firm is, 'Shrinath Traders' and address of the said firm is that of the suit premises; that the defendant is not doing business in the suit premises.

2.7 Thus, the case of the plaintiff was denied and it was prayed that the suit be dismissed.

3. The learned trial Judge framed the following issues:

A) Whether the plaintiff proves that the suit premises let out for the residential purposes?

B) Whether the plaintiff proves that the defendant No.1 has

sublet the suit premises to the defendant No.2 as alleged?

C) Whether the plaintiff proves that the defendant has committed breach of the terms of tenancy as alleged?

D) Whether the plaintiff proves that the defendant has acquired suitable accommodation as alleged?

E) Whether the plaintiff proves that the rent amount Rs.1,000/- due with defendant from 01.09.1996 to 28.02.1997 as alleged?

F) Whether the plaintiff is entitled to possession of the suit premises?

G) What relief is the plaintiff is entitled to get?

H) What order and decree?

3.1 The learned trial Judge recorded findings as under:

A) In affirmative.

B) In affirmative.

C) In affirmative.

D) In affirmative.

E) In affirmative.

F) In affirmative.

G) As per order.

H) As per order.

4. The learned trial Judge held that the suit premises were let only for the purpose of residence; that defendant No.1 has sublet the premises to defendant No.2; that the defendant has committed breach of terms of tenancy' that the plaintiff is able to prove that the defendant has acquired suitable accommodation; that the plaintiff has also proved that the rent amount of Rs.1,000/- is due from 01.09.1996 to 28.02.1997 and finally the learned trial Judge was pleased to hold that the plaintiff is entitled to possession of the suit premises.

4.1 The learned trial Judge after taking into consideration the rival submissions of both the parties, allowed the suit for possession and ordered to pass a decree to that effect by judgment and order dated 31.01.2005. The learned trial Judge directed the defendant to handover vacant and peaceful possession of the suit premises to the plaintiff within two months from the date of the order. The learned trial Judge was also pleased to order that the plaintiff is entitled to recover arrears of rent from 01.10.1996 to 28.02.1997 – Rs.1,000/- and the plaintiff is also entitled to recover mesne profits @ Rs.200/- per month from the date of the suit till recovery of possession of the suit premises from the defendants.

5. The defendants being aggrieved by the said judgment and order, preferred an appeal before the Appellate Bench of the Small Causes Court, Ahmedabad being Civil Appeal No.26 of 2005. The

said appeal was heard by the Appellate Bench and came to be decided by judgment and order dated 17.10.2006.

5.1 The Appellate Bench framed the following issues:

A) Whether the learned trial Judge has erred in coming to the conclusion that the defendant No.1 has sublet the suit premises to the defendant No.2 as alleged?

B) Whether the learned trial Judge has committed an error in deciding Issue No.3 that the defendant has committed breach of terms of tenancy?

C) Whether the learned trial Judge has committed an error, while deciding Issue No.4 regarding acquisition of suitable accommodation?

D) Whether the decree of eviction passed by the learned trial Judge deserves to be set aside?

E) What order?

5.2 The Appellate Bench answered the issues as under:

A) In the negative.

B) In the negative.

C) In the affirmative.

D) In the negative.

E) As per final order.

5.3 The Appellate Bench was pleased to hold that the learned trial

Judge has not erred in coming to the conclusion that defendant No.1 has sublet the suit premises to defendant No.2; that the learned trial Judge has not committed any error in deciding issue No.3 that the defendant has committed breach of terms of tenancy. The Appellate Bench was also pleased to hold that the learned trial Judge has committed an error while deciding issue No.4 regarding acquisition of suitable accommodation and finally, the Appellate Bench held that the decree of eviction passed by the learned trial Judge does not deserve to be quashed and set aside.

6. Mr.S.M.Shah, learned advocate for the petitioners vehemently submitted that the rent note – Exh.26, which is made available for perusal by Mr.K.V.Shelat, learned advocate for the respondent and which is taken on record, was executed for a specified period, i.e. 11 months and 29 days and that by lapse of time, it has come to an end and therefore, the same cannot be looked into for any purpose.

6.1 The learned advocate for the petitioners next submitted that the rent receipts are issued in the name of defendant No.1. He submitted that the Courts below have committed an error in coming to the conclusion that there was subletting by defendant No.1 to defendant No.2.

6.2 The learned advocate for the petitioners emphasized on the observations made by the Appellate Bench on the point of subletting. The relevant part of those observations reads as under:

“In the case on our hands, though the appellant No.1 and appellant No.2 are real brothers they cannot assign the interest of anyone. In the case on our hands, we find that appellant No.1 has allowed his real brother – appellant No.2 to occupy the suit premises. In the sameway, the appellant No.2 has allowed the appellant No.1 to occupy the suit premises or H.R.P. Suit No.1147/1993 is the case and base submitted by learned advocate for the appellant. Such submission is with the support of bare words that there was a joint family. The theory of the joint family if at all was genuine, it ought to have reflected in the rent note executed by the appellant No.1, but this is not done and in such circumstances, the learned advocate for the respondent has relied upon the citation reported at 2001 (3) G.L.H. 3, in the case of VORA KADARBHAI MAJIDBHAI V/S. MANSURI JUSABHAI SHAKURBHAI AND ORS. In the cited case, subletting of the suit premises in favour of the real brother of tenant-in-chief. Following guidelines from the said citation, we find that in case of subletting, two things are to be established, one that; the tenant has made exclusive transfer of the possession by whole or part of the premises and such transfer of the possession was for consideration. In case on our hands, we find the admitted fact that the appellant No.2 is in possession of the suit premises and so far as the valuable consideration is concerned, the learned advocate for the respondent has drawn our attention that the premises hired by the appellant No.2 is 13, Dhawal Society and rent of the said premises is Rs.500/- while the rent of this suit premises is Rs.200/- and inter-exchange of the premises the appellant No.1 tenant-in-chief has saved Rs.300/- and this is the valuable consideration. Looking to the facts and circumstances of the case and applying the principles as laid down by Sec. 13(1)(e) of the Bombay Rent Act, we come to the conclusion that if for a moment, if there is lack of the

ingredients regarding transfer, it does recover case of assignment of interest in the suit premises."

6.3 The learned advocate for the petitioners vehemently submitted that if defendant No.2 has taken on rent the premises, of which rent of Rs.500/-, whereas rent of the suit premises is Rs.200/-, even remotely it cannot be said that defendant No.1 is getting Rs.300/- or that defendant No.2 is paying Rs.300/- to defendant No.1, as consideration for subletting.

6.4 The Appellate Bench has considered the aspect of subletting in detail. So far as physical possession of the premises is concerned, there is not much to be said because both the Courts have concurrently found that defendant No.2 is in possession of the premises, which were originally let out to defendant No.1. So far as consideration part is concerned, the rent of the suit premises is Rs.200/-; defendant No.2 takes premises on rent, of which rent is Rs.500/-; he hands over the possession of those premises to defendant No.1 and enjoys possession of the suit premises, of which rent is only Rs.200/-.

6.5 This Court is in agreement with the Courts below that defendant No.1 is getting consideration of Rs.300/- by using the premises whose rent is Rs.500/- while allowing the suit premises to be used by defendant No.2. It is true that the plaintiff is not able to and as is held by the Hon'ble the Apex Court, may not be able to prove that defendant No.2 was paying a sum of Rs.300/- as

consideration to defendant No.1. In the preset case, defendant No.2 has taken premises on rent, the rent of which is Rs.500/- and allows defendant No.1 to enjoy those premises and in turn, he takes possession of the suit premises, of which rent is only Rs.200/-, he is indirectly paying to defendant No.1 Rs.300/-, which may not be in the form of direct payment of cash. At this juncture, it will be appropriate to refer to a decision of the Hon'ble the Apex Court cited by Mr.K.V.Shelat, learned advocate for the respondent in the matter of **JOGINDER SINGH SODHI VS. AMAR KAUR**, reported in (2005) 1 Supreme Court Cases 31, wherein the Hon'ble the Apex Court was pleased to observe as under:

> "The respondent landlady filed an eviction petition under Section 13 of the E.P. Urban Rent Restriction Act, 1949 (3 of 1949) seeking eviction of *S* (since deceased) and his son *J* (appellant) from the shop in question on two grounds, namely, *(i)* non-payment of rent, and *(ii)* sub-letting. Before the Rent Controller the ground of not-payment of rent was not pressed by the landlady. The issue for determination, therefore, which remained before the Rent Controller was as to whether *S* had sub-let the premises to *J*. **Considering the rent note executed by *S*, the Rent Controller recorded a finding that the property was let out to *S* and without the written consent of the landlady, it was sub-let by *S* to *J*.** It was also recorded that *S* and *J* were staying separately and J was found to be in exclusive possession of the shop and was doing business as a photographer. It was further observed that from the rent note it was clear that the property was to be used by *S* only but since he parted with possession thereof and *J* was found to be in exclusive possession, the case of sub-

> letting by *S* in favour of *J* was established. Accordingly, an order of eviction was passed against *J* and *S*. The order of eviction was confirmed by the Appellate Authority. In revision, the High Court upheld the order of the forum below. It further observed that since *S* died during the pendency of the revision petition and his name was ordered to be deleted from the array of parties without reservation of any right of any of the legal heirs, the order of eviction passed against him remained unchallenged and the legal heirs were bound by such order."

6.6 In light of the facts emerging from the aforesaid observations of the Hon'ble the Apex Court, the facts of the case on hand are to be considered. The two Courts below have held that defendant No.1 has sublet the premises to defendant No.2. The learned trial Judge has recorded its finding in the following terms:

> "Looking to the oral evidence of the plaintiff and rent note Ex.26 which shows that the suit premises is rented only for residence. In cross examination the defendant No.2 Dilipbhai has admitted that the landlord has not given permission for business in the suit premises. Looking to the clause 4 of the rent note Ex.26 which is specific that the suit premises is rented only for residence. The defendant No.2 stated that the address of the suit premises is given for the income tax purposes but they are not using suit premises for business. Looking to the court Commissioner's report, wherein it is noted that in portion 'C' of the premises there is one wooden rack, two iron rack and 'gadi takia' were found and in racks 'takas' of cloths were found. In this portion one sewing machine and stitched cloths were also found lying on machine."

7. So far as the Appellate Bench is concerned, the Appellate Bench has not reversed these findings of fact and so far as consideration aspect is concerned, as discussed hereinabove, the Appellate Bench has believed that defendant No.1 has sublet the premises to defendant No.2 and defendant No.1 can be said to be receiving a sum of Rs.300/- as consideration for the same.

8. The learned advocate for the petitioners relied upon a decision of the Hon'ble the Apex Court in the matter of **A.S. SULOCHANA VS. C. DHARMALINGAM**, reported in AIR 1987 SUPREME COURT 242 in support of his contention that assuming for the sake of argument, without admitting, that there was subletting, that subletting was within the knowledge of the landlord (landlady) for long many years and that being so, it ought to have been held by the Courts below that the landlady had waived her right to seek decree of possession on the ground of subletting. The learned advocate relied upon the observations made by the Hon'ble the Apex Court in paragraph No.2. For ready perusal, those facts are reproduced hereinbelow:

> “2. Facts not in dispute are :-
>
> (1) The father of the appellant had granted a lease in favour of the father of respondent prior to 1952 (the exact date or year is not on record).
>
> (2) The father of the appellant as also the father of respondent both have died.

(3) Respondent was accepted as a tenant upon the death of his father in 1968.

(4) The suit for eviction giving rise to the present appeal was instituted for eviction in the ground of unlawful subletting in 1970 by the appellant who had inherited the property from her father.

(5) Admittedly, neither the appellant nor the respondent has any personal knowledge about the terms and conditions of the lease originally granted by the father of the appellant in favour of the father of respondent No. 1.

(6) So also neither the appellant nor the respondent has any personal knowledge in what circumstance the father of the respondent had created a subtenancy in favour of Kuppuswami Sah way back in 1952, eighteen years before the institution of the suit.

(7) Neither the appellant nor respondent has any personal knowledge as to whether or not the subtenancy was created with the written consent of the landlord eighteen years back in 1952.

And on these facts the prayer for eviction must be denied regardless of the question of interpretation which will be presently tackled. The mere fact that for as many as 18 years no objection was raised, and no action for possession was instituted against the father of the appellant (respondent?) in his lifetime notwithstanding the fact that a sub-tenant was openly in occupation of a part of the rented premises, would give rise to an inference that it was never treated as unlawful subletting by the appellant or her father. There is nothing on record to show that the subletting in question, which was made in 1952,18 years before the institution of the suit in 1970, was in violation of the relevant provisions of law.....”

8.1 In the case on hand, the facts are otherwise. There is no waiver by the landlady and therefore, the aforesaid decision of the Hon'ble the Apex Court is not applicable to the facts of the present case.

9. The learned advocate for the petitioners next relied upon a decision of the Hon'ble the Apex Court in the matter of **D.C. OSWAL VS. V.K. SUBBIAH AND OTHERS**, reported in AIR 1992 SUPREME COURT 184 in support of his submission that so far as other ground on which the trial Court has passed decree of eviction, i.e. change of user is concerned, assuming, without admitting, that there was change of user, the same was within the knowledge of the landlord (landlady) for long many years and the landlady has not objected to the same, meaning thereby that she waives her right to get a decree of eviction on that ground.

10 In the case before the Hon'ble the Apex Court, it was for long 7 years that the landlord did not object to the change of user and taking that into consideration, the Hon'ble the Apex Court observed in paragraph No.6 of the said decision as under:

> “Both the parties relied upon a decision of this Court in the case of S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591 : (AIR 1985 SC 582), where default and 'wilful' default were distinctly treated. In the several statutes operating in the different States regulating the law relating to landlord and tenant 'wilful' default has been made the ground of eviction

> while default is not. We may also refer to a short but suggestive order dated March 27, 1991, of this Court in Civil Appeal No. 1367 of 1991 (Premchand Ranka v. A. Vasanthraj Khatod) to support our conclusion. A situation where the landlord had consented to collect rent for two to three months at a time non-payment of rent for three months cannot constitute wilful default. Since in the present case default was of three months at the time of filing of the case, we are prepared on the basis of the evidence on record that it was not a case of wilful default. Accordingly, the conclusion reached in appeal and upheld by the High Court would not be sustainable."

10.1 Like the earlier decision in the present case, the facts are otherwise and there is no question of waiver on the part of the landlady and therefore, this decision of the Hon'ble the Apex Court does not apply to the facts of the present case.

11. The learned advocate for the petitioner next relied upon a decision of the Hon'ble the Apex Court in the matter of **RAUNAK RAM VS. PISHORI SINGH**, reported in AIR 1990 SUPREME COURT 1892. This decision is relied upon by the learned advocate for the petitioners in support of his submission that on the facts of the case, it cannot be held to be a subletting.

11.1 In the case before the Hon'ble the Apex Court, it was the case of the landlord that there is subletting in favour of a firm by executing a deed by one of the partners and rent was paid by the firm. Thereafter, the said partner retired from the firm, but the

business and lease in the name of the firm was continued and the Hon'ble the Apex Court was pleased to hold that, the same does not amount to subletting.

11.2 The facts of the case on hand are different. There is no question of subletting in favour of firm and there is categorical finding recorded by the Courts below that there is subletting by defendant No.1 in favour of defendant No.2 and therefore, the said decision has no application to the facts of the present case.

12. The learned advocate for the petitioners vehemently argued that so far as change of user is concerned, assuming for the sake of argument that there was change of user, it was not for the entire property. He submitted that even the learned trial Judge has recorded that in the Court Commissioner's report, it is only in 'C' portion of the premises, one wooden rack, two iron rack and 'gadi takia' were found and in racks 'takas' of cloths were found. In this portion one sewing machine and stitched cloths were also found lying on machine, which goes to show that the entire premises were not subjected to change of user. The learned advocate for the petitioners relied upon the provisions of Clause (k) of Sub-section (1) of Section 13 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947(hereinafter referred to as, “the Rent Act”), which reads as under:

> “(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a

continuous period of six months immediately preceding the date of the suit;"

12.1 In this regard, he relied upon a decision of this Court in the matter of **BHAGWATI SPG. & WVG. WORKS VS. AHMEDABAD NEW COTTON MILLS CO. LTD.**, reported in 1979 GLR Vol. XX 932, wherein the Court was considering the expression, 'premises' used in Section 13(1)(k) of the Rent Act and held that:

"When sec. 13(1)(k) of the Bombay Rent Act is read in the light of sec. 13(1)(e) and sec. 13(1)(ee), no doubt is left that the use of different expressions in these two sub-sections clearly denotes the intention of the legislature that the expression 'the premises' used in sec. 13(1)(k) means the **entire premises** and not a part of it."

13. The learned advocate for the petitioners strongly relied upon the above decision and argued that even if it is believed that there was change of user, the same was not for the entire premises and at the best, it was only for a part of it.

13.1 The said decision has no application to the facts of the present case inasmuch as, the facts before the Court in the aforesaid decision were:

"..... Defendant No.1 – the tenant – had unlawfully sublet a part of the suit premises to defendant No.2. The suit premises are business premises where the powerlooms have been installed. The suit premises consist of three survey numbers – 16/14, 16/24 and 401/8. The rent agreed upon between the

parties was Rs.55/- per month. The plaintiff alleged that survey no.16/24, a part of the suit premises was unlawfully sublet by defendant no.1 to defendant no.2. Similarly survey no.401/8, another part of the suit premises was unlawfully sublet by defendant no.1 to defendant no.2. Survey No.16/24 had not been used by defendant no.1 within the meaning of sec. 13 (1) (k) of the Bombay Rent Act."

13.2 The defence pleaded in that case is also equally important for our consideration. The same is as under:

"2. In defence it was contended by defendant no.1 that he had been using and occupying all of them and that his powerlooms were there. It was further alleged by defendant no.1 that defendant no.2 had trespassed into survey No.401/8, a part of the suit premises and that in collusion with the plaintiff he had handed over its possession to the plaintiff soon after institution of the suit."

13.3 As above, it is not the case on hand. In the present case, it is not even remotely suggested by defendant No.1 that defendant No.2 had collusion with the plaintiff. Besides, observations made by the Court in paragraph No.7 are also equally important for our purpose, which are as under:

"7. It is also necessary to examine in this context the consequences which will flow if the expression "the premises" used in sec. 13(1)(k) is held to include a part of the premises. In a good number of cases large premises let out to a tenant may not be put to use by the tenant in its entirety during the

course of continuance of his tenancy. This is likely to happen in a case when a person establishes a new business and looks forward to the expansion of his business in future. Any business set up by a businessman or a manufacturer is bound in the beginning to be small depending upon his resources. He may take on rent the premises which are just sufficient for the purpose of his new business or he may take on rent larger or bigger premises in order to provide for future expansion of his business. If he takes on rent the bigger premises than are needed by him at the start of his business a part of the premises may remain unused until his business expands. Can we in such a case say that a businessman who had used only a part of his premises under the aforesaid circumstances for six months or more is liable to be evicted because he could not for the statutory period contemplated by sec. 13(1)(k) make use of the entire premises ? To take any such view is to unduly hit the tenants particularly the businessman. Therefore, on analogy of sec. 13(1)(e) and sec. 13(1)(ee) of the Bombay Rent Act and also on account of the social consequences which are likely to flow from the rigid construction of sec. 13(1)(k) I am inclined to hold that the expression “the premises” used in sec. 13(1)(k) means the entire premises and not a part of it.”

13.4 So far as facts of the case on hand are concerned, the same are totally different. The premises were let out for residential purpose and in Court Commissioner's report, in portion 'C', what was found by the Court Commissioner is reproduced by the learned trial Judge, which shows that the premises were not used for the residential purpose at all. Applying the same analogy, which the learned Judge has applied in the aforesaid judgment that initially

defendant No.2 started using premises only part of it by change of user, but then he did not continue to use even the remaining part of the premises as residence. Therefore, this decision does not help the petitioners.

14. The learned advocate for the petitioners submitted that even accepting the case of the plaintiff, it is the case of the plaintiff that sub-tenancy had come in to existence in 1989 and therefore, suit filed in the year 1997 is barred by period of limitation.

14.1 In a decision of the Hon'ble the Apex Court in the matter of Joginder Singh Sodhi (supra), the Hon'ble the Apex Court had an occasion to consider question of waiver on the part of the landlady and the Hon'ble the Apex Court found that such contention is not sustainable and therefore, this contention is of no consequence.

15. Mr.K.V.Shelat, learned advocate for the respondent relied upon a decision of the Hon'ble the Apex Court in the matter of Joginder Singh Sodhi (supra) and submitted that the Hon'ble the Apex Court was pleased to hold that:

> "Regarding sub-letting, the law is well settled. It has been held by the Supreme Court that on sub-letting the two ingredients, namely, parting with possession and monetary consideration therefore have to be established.
>
> Considering the facts of the case, it can be concluded that it was proved that the tenant *S* had parted with possession in favour of his son *J* who was found to be in exclusive possession though he was staying separately

> The contention of the appellant *J*, however, is that even if it is assumed that one of the ingredients of sub-letting was established, the second ingredient, namely, parting of possession with "*monetary consideration*" was not established."

15.1 The Hon'ble the Apex Court has further held that:

> "The said contention is not appreciable. **Proof of monetary consideration by the sub-tenant to the tenant is not a sine qua non to establish sub-letting**. Though the burden of proof of sub-letting is on the landlord but once he establishes parting of possession by the tenant to a third party, the onus would shift on the tenant to explain his possession."

16. In the present case, it is on record that defendant No.2 is in exclusive possession of the suit premises, whereas defendant No.1 is in the premises which are though taken on lease by defendant No.2 and he is paying higher rent having found the suit premises to be more suitable to run his business, parted with possession of those premises and agreed to be in possession of the suit premises. Thus, consideration is paid by defendant No.2 to defendant No.1

16.1 Mr.Shelat, learned advocate for the respondent also invited attention of the Court to a decision of the Hon'ble the Apex Court in the matter of **PATEL VALMIS HIMATLAL AND OTHERS VS. PATEL MOHANLAL MULJIBHAI (DEAD) THROUGH LRs.**, reported in 1998 (2) G.L.H. 736, pointing out the scope of revisional powers of

this Court. The Hon'ble the Apex Court observed as under:

> "Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 – S. 29(2) – Revisional powers to be exercised only for a limited purpose of correcting a substantial error of law which goes to the root of the decision – High Court cannot substitute its own finding on a reappraisal of evidence, even though different view is possible – On facts held, findings of the courts below were correct and High Court came to a wrong conclusion on reappreciation of evidence."

17. Learned advocate for the petitioners lastly submitted that in the event the Court is not inclined to accept the revision and does not accept any of the contentions raised by the learned advocate, the Court be gracious enough to grant some reasonable time to vacate the premises or to enable the petitioners to approach higher forum, if they so decide.

17.1 It is a high time when the members of the society start behaving more responsibly. The premises which were taken in the year 1971 from which entire family of the petitioners flourished and they could acquire suitable accommodation for themselves and other family members, they should have graciously vacated the premises, thanking the landlady for having accommodated, in fact, tolerated them for so many years. The request of the learned advocate for the petitioners is not found reasonable and hence, it is rejected.

18. In the result, the revision application fails and it is dismissed.

Notice is discharged with no order as to costs. Interim relief is vacated.

(RAVI R.TRIPATHI, J.)

*Shitole